IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1819 of 2000
to
FIRST APPEAL No. 1841 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER - Appellant(s)
Versus
MANSUKHBHAI SHERIYABHAI & 2 - Defendant(s)

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Appearance :
MR ND GOHIL for Appellant(s) (In all FAs)
MR AJ PATEL for Respondent(s)-Claimant(s)(In all FAs)
MS KRINA P.CALLA, AGP for Respondent-State (In FA 1819/00 to 1826/00)
MS TANUJA N.KACHCHHI, AGP for Respondent-State (In FA 1827/00 to 1831/00)
MR KRUNAL D.PANDYA, AGP for Respondent-State (In FA 1832/00 to 1836/00)
MS MINI NAIR, AGP for Respondent-State (In FA 1837/00 to 1841/00)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 22/12/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. What is challenged in these Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, by the acquiring body i.e. the Executive Engineer, Construction Division No.3, Kevadia Colony, Sardar Sarovar Narmada Corporation Limited, Bharuch, is the legality of the common judgment and award dated November 16, 1999, rendered by the learned Assistant Judge, Bharuch, Court Camp at Rajpipla, in Land Acquisition Case No.624 of 1996 to Land Acquisition Case No.646 of 1996 by which the claimants have been awarded compensation in all at the rate of Rs.10/- per sq.mt. for their acquired lands.

2. The Executive Engineer, Construction Division No.3, Kevadia Colony, Bharuch, proposed to the State Government to acquire the lands of village Indravarna, Taluka: Nandod, District:

Bharuch (now District: Narmada), for the public purpose of construction of Garudeshwar Weir under the Narmada Nigam Project. On scrutiny of the said proposal, the State Government was satisfied that the lands specified in the said proposal situated at village Indravarna were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on September 19, 1991. The land owners whose lands were proposed to be acquired were served with notices under Section 4 of the Act. After receipt of notices, the land owners opposed the proposed acquisition. The Special Land Acquisition Officer, after considering the objections lodged by the land owners, forwarded his report to the State Government as contemplated by Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Indravarna which were specified in

the notification published in the gazette under Section 4 of the Act were needed for the public purpose of construction of Garudeshwar Weir under the Narmada Nigam Project. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on April 1, 1993. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.15/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, offered compensation to the claimants at the rate of Rs.2.10 ps. per sq.mt. for irrigated lands and Rs.1.40 ps. per sq.mt. for non-irrigated lands, by his award dated November 8, 1994. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted

applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Bharuch, where they were registered as Land Acquisition Case No.624 of 1996 to Land Acquisition Case No.646 of 1996. The cases were thereafter referred for disposal to the Court of learned Assistant Judge, who was camping at Rajpipla.

3. On behalf of the claimants, witness Narshibhai Ramjibhai was examined at Ex.12. The witness mentioned that the lands acquired were highly fertile and that each claimant was earning substantial income from the sale of agricultural produces such as cotton, sugarcane, etc. The witness mentioned before the Reference Court that previously, from this very village, lands were acquired and that the claimants were entitled to

compensation on the basis of the previous award of the Reference Court. The witness produced copy of the previous award of the Reference Court relating to the lands of this very village at Ex.13. Though this witness was cross-examined by the learned counsel for the acquiring body, nothing substantial could be elicited. No witness was examined either by the State Government or by the acquiring body.

4. On appreciation of evidence adduced by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village produced at Ex.13 was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. Placing reliance on the said previous award, the Reference Court has awarded in all compensation at the rate of Rs.10/- per sq.mt. with statutory benefits by the

impugned award, giving rise to the abovenumbered Appeals.

5. This Court has heard Mr.N.D.Gohil, learned counsel for the appellant as well as Mr.A.J.Patel, learned counsel for the claimant/ claimants and Ms.Krina P.Calla, learned Assistant Government Pleader, for the respondent No.2, at length and in great detail. This Court has also considered the Record and Proceedings of the case received from the Reference Court.

6. The plea that as the claimants have not handed over possession of the lands acquired, the benefit of statutory interest should not have been granted and therefore, the impugned award should be modified, has no substance. The operative order passed by the Reference Court reads as under:

"L.A.R. Nos.624/96 to 646/96 are partly allowed.

Claimants of L.A.R. Nos.624/96 to 646/96 are entitled to get Rs.1000/- (Rupees One thousand only) as compensation for the acquired (sic – acquisition) of their lands.

Each claimants are entitled to get 12% increase upon the market price form the date of notification under Sec.4 of the Act till the date of award passed by the Land Acquisition Officer under Sec.23(1-A) of the L.A.Act. Each claimants are entitled to get 30% solatium upon the compensation amount under Sec.23(2) of the L.A.Act.

Each claimants are entitled to get the interest @ 9% upon the compensation for the first year from the date of taking over the possession and @ 15% for the subsequent year, till realisation.

If the acquired lands are new tenure then 5% is required to be deducted from the awarded amount.....”

A bare reading of the above-quoted order makes it very evident that the Reference Court has granted interest as required by law. It may be mentioned that it was also claimed by the appellant before the Reference Court that the claimants had not handed over the possession to it and therefore, they were not entitled to enhanced compensation. However, on appreciation of evidence, a specific finding has been recorded by the Reference Court in paragraph-18 of the impugned award that the possession of the lands acquired was already taken by the appellant. The appellant has filed Civil

Applications No.4279/01 to 4301/01 under Order 41, Rule 27 of the Code of Civil Procedure, 1908, to permit him to lead additional evidence at the appellate stage to establish that the possession of the lands has not been handed over to the acquiring body. It may be mentioned that those applications were ordered to be heard along with the instant Appeals. Even if the additional evidence is permitted to be adduced, the documents annexed along with the applications do not indicate that possession of the lands acquired was not handed over to the appellant. Therefore, the claim that enhanced compensation should not have been awarded to the claimants or that statutory interest should have been denied to them in view of the fact that possession of the lands acquired was not handed over to the acquiring body cannot be accepted.

7. It may be mentioned that Ex.30, which is the previous award of the Reference Court,

indicates that lands of village Indravarna were acquired for the public purpose of construction of Karjan Irrigation Jalasah Tail Water pursuant to publication of notification issued under Section 4(1) of the Act on December 27, 1990, whereas in the instant case, notification issued under Section 4(1) of the Act was published in the official gazette on September 19, 1991. Normally, the claimants would be entitled to get reasonable rise in price of lands at the rate of 10% if there is time-gap between issuance of notifications under Section 4(1) of the Act. However, the impugned award makes it very evident that this benefit is denied t the claimants. Further, those claimants whose lands were acquired pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on December 27, 1990, were awarded compensation at the rate of Rs.11/- per sq.mt. but in the instant case, the claimants have been awarded compensation at the rate of Rs.10/- per

sq.mt. without assigning any cogent reasons.

8. If the grievance of the appellant that the claimants have not handed over possession of the lands acquired to the acquiring body subsists, the remedy is to take action as provided in Section 47-A of the Act, as is applicable in the State of Gujarat, under which, the possession of the lands acquired can be taken with the help of Police. On the facts and in the circumstances of the case, this Court is of the opinion that no ground is made out by the learned counsel for the appellant to interfere with the impugned award in the instant Appeals.

9. On re-appreciation of evidence adduced by the claimants, this Court finds that correct findings of facts have been recorded by the Reference Court to which well established principles of law have been applied. As the learned counsel for the appellant has failed to persuade this Court to take a view different than the one which is taken by the

Reference Court on appreciation of evidence, the Appeals are liable to be dismissed.

10. However, the learned counsel for the claimants has pointed out to the Court that the Reference Court has not granted interest on the amounts found payable under Section 23(1-A) and 23(2) of the Act. In *Shree Vijay Cotton and Oil Mills Ltd. v. State of Gujarat – AIR 1991 SC 656*, the Supreme Court has held that interest on compensation can be claimed by the claimants at any stage of proceedings under the Act and the claimant need not file separate Appeal/ Cross Objections before the High Court. What is emphasized in the said decision is that a claimant can claim interest on the amount awarded in Appeal filed by the State Government. The principle laid down by the Supreme Court in the above-quoted decision would also be applicable to an Appeal filed by the acquiring body also and therefore, the grievance raised on behalf of the claimants will have to be examined by

this Court. A perusal of the operative order passed by the Reference Court makes it very clear that the Reference Court has failed to award interest on the amounts found payable under Section 23(1-A) and 23(2) of the Act. In *Sunder v. Union of India – 2001(3) GLH 446* the Five Judge Constitution Bench of Supreme Court has held that a person is entitled to get interest on the aggregate amount including solatium. Under the circumstances, interest will have to be awarded to the claimants on the amounts which are found payable under Section 23(1-A) and 23(2) of the Act.

11. For the foregoing reasons, the Appeals filed by the acquiring body fail and are dismissed. However, the impugned award is modified and it is held that the claimants would be entitled to get interest on the amounts found payable under Section 23(1-A) and 23(2) of the Act. There shall be no orders as to costs. The Registry is directed to draw

decree in terms of this Judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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